IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 2682/2007

SMT. AGYA KAUR & ORS. Vs. SHRI PRAKASH CHAND

DATE: 07.08.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Dharmendra Kr. Srivastava for the petitioners.
Mr. Rinesh Gupta for the respondent.

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This writ petition is directed against the order dated 22.03.2006 passed by the Appellate Authority i.e Additional District Judge No.4, Kota in Appeal No. 50/2005. The Appellate Court while allowing the appeal of the respondent, quashed and set aside the order dated 28.04.2004 passed by the Additional Chief Judicial Magistrate No.4, Kota. The Rent Tribunal, Kota (for short 'the Tribunal') vide its order dated 06.02.2004 fixed the provisional rent @ Rs. 3292/- per month and the Appellate Court ordered that respondent-tenant is directed to deposit rent @ Rs. 1350/- per month but the amount of rent deposited by the respondent-tenant is Rs. 1000/- per month.

Learned counsel for the petitioner submits that the rent determined by the Tribunal provisionally

on the consent given by both the parties @ Rs. 3292/- per month and further submits that the petitioner has got right to file application under Section 6 (Revision of rent in respect of existing tenancies), Chapter-II of the Rajasthan Rent Control Act, 2001 and the Rent Tribunal has rightly revised the rent.

Section 6 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950 (for short 'the Act of 1950') provides for determination of provisional Rent under Sub-section (3)- (a) Factors for consideration while determination- It is clear that the only consideration that should weigh with a court while making such a determination summarily is firstly the amount which was agreed to be paid or last paid by the tenant and secondly any amount which had been paid and required to be adjusted or reduced in accordance with law.

Further in Sub-section (b) procedure for determination has been given.

As per the practice and procedure subsequent event was taken into account, as held by the Hon'ble Supreme Court in the case of **Om Prakash Gupta Vs. Ranbir B. Goyal, (2002)2 SCC 256,** wherein it has been held by the Hon'ble Supreme Court that court has power to take note of and mould relief as appropriate but

only if three conditions are satisfied: (i) relief, as originally claimed has become inappropriate or impossible to grant; (ii) taking note of such event or changed circumstances would lead to early end of the litigation and would result in complete justice being done; and (iii) subsequent events are brought to notice of court promptly and in accordance with rules of procedure to ensure that opposite party is not taken by surprise.

Therefore looking to the changed circumstances, application under Section 6 for revision of the provisional rent has been moved.

Per contra, learned counsel appearing for the respondent-tenant has raised objection with regard to suit which is pending prior to enforcement of the New Act of 2001. The provisions of New Act is not applicable to the suit pending and it is not disputed that the suit is pending since 1989 and thus, revision can only be made under Section 13(3) of the Old Act. It is also observed by the Appellate Authority that in the application moved on behalf of the petitioners for revision of rent, they claimed only Rs. 1350/- per month whereas the Rent Tribunal has granted Rs. 3292/- per month and thus the Appellate Authority has rightly quashed and set aside the order dated 28.04.2004.

Learned counsel for the respondent has also placed reliance on the judgment rendered by this Court in the case of **Narain Prakash & Anr. Vs. Bajrang Lal through L.Rs., 2005(3) RLR 684,** wherein this Court has held that procedure for fixation of standard rent pending under the Old Act of 1950 prior to commencement of the New Act of 2001- By which Act to be governed- the proceedings shall be continued and disposed of in accordance with the provisions of repealed Act.

I have considered the rival submissions of the respective parties and carefully gone through the orders passed by the Rent Tribunal and the Appellate Authority as well as the judgments referred before me and the relevant provisions of law.

It is not disputed that the respondent is paying Rs. 1,000/- per month and it is also not disputed that the application for revision of rent has been filed by the petitioners under Section 6 of the New Act of 2001 and the suit for permanent injunction of the rent is still pending.

Without going into the merits of the case, since the suit itself is pending for determination of rent and the petitioners have only claimed in their application for revision of rent Rs. 1350/- per month, the provisional rent fixed by the Tribunal @ Rs. 3292/-

per month is per se appears to be excessive, but so far as observations made by the Appellate Authority, no illegality has been committed by the Appellate Authority and the Appellate Authority after considering the ratio decided by this Court and the Hon'ble Supreme Court observed that the revision can only be asked under Section 13(3) of the Old Act of 1950.

In view of these facts, the petitioners could have file application for revision of rent under Section 13(3) of the Old Act of 1950.

In view of the observations made herein above, I find no illegality in the impugned order dated 22.03.2006 passed by the Additional District Judge No.4, Kota.

Consequently, the writ petition fails and the same is hereby dismissed.

However, liberty is given to the petitioners to move application under Section 13(3) of the Old Act of 1950 for revision of provisional rent.

(K.S. RATHORE),J.

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